

DHCD Section 8 Administrative Plan Amendment: 2005-04

Programs: ALL

Effective Date: July 1, 2005

Purpose: To strengthen DHCD's policy relative to repayment agreements for fraud and other reasons and to ensure consistency in its application among DHCD's regional administering agencies.

Implementation:

Effective July 1, 2005 for all new repayment agreements. For current participants with repayment agreements, this policy may be implemented immediately. At reexamination, the RAA must review all existing claims. At that time, the family's repayment schedule may be restructured and the family and the RAA will enter into a new repayment agreement.

To Section 3.5, Denial of Assistance to Applicants, add the following:

If an applicant owes money to a DHCD RAA from a previous tenancy in a state-or federally assisted unit, the applicant family will not be admitted to the program unless the debt is paid in full.

In Section 11, Termination of Assistance, eliminate subsection 11.1.3. Debt Collection, in its entirety and to Section 8, Annual and Ongoing Functions add a new subsection, 8.8 Debt Collection, as follows:

8.8 Debt Collection*

A Section 8 participant family is obligated to pay money owed to the RAA as a condition of continued participation in the program. When an RAA has paid a vacancy loss or damage claim¹ to a property owner or when a participant has misrepresented its household income or other information resulting in an overpayment of subsidy, the family must repay this money to the RAA. The family will be terminated from the program if they do not either:

- Repay the full amount owed; or,
- Enter into a repayment agreement and abide by the terms of the repayment agreement.

The RAA is not obligated to enter into a repayment agreement with a family. Section 11.1 states that in the absence of mitigating circumstances, the RAA will terminate assistance to a family for reasons including, but not limited to: 1) fraud; 2) vacancy loss or damage claim; 3)

¹ HUD's policy regarding the payment of damage claims and vacancy loss changed effective October 2, 1995. An RAA may not pay damage claims and vacancy loss on behalf of families that entered into a lease after that date. However, a family under a new lease and HAP contract may have an outstanding claim from a previous tenancy.

refusing to enter into a repayment agreement or not complying with a repayment agreement; and, 4) violating family obligations which includes fraud. Therefore, a repayment agreement should only be entered into when a family is able to prove that mitigating circumstances were a factor in incurring the debt. Please refer to Section 13 for more information on mitigating circumstances.

If mitigating circumstance cannot be proved, the RAA must not enter into a repayment agreement and the applicant must be terminated from the program.

If the family's assistance is terminated and repayment has not been made, the money is still owed and the RAA may take action to collect the amount owed even though the family is no longer a Section 8 participant.

For information on debt collections pertaining to applicant families see Section 3.5, Denial of Assistance to Applicants.

8.8.1 Repayment Policy

If this is the first claim in five years, the participant family may either:

- Pay in full;
- Enter into a repayment agreement; or,
- Refuse to enter into a repayment agreement and be terminated from the program.

If this is a second claim in a five-year period regardless of whether the prior claim has been repaid, then the participant family:

- Must continue to pay according to the existing repayment contract if the claim has not been repaid; and,
- Cannot enter into a repayment agreement for the subsequent claim. Full repayment for the subsequent claim must be made.

8.8.2. Repayment Agreement

8.8.2.1 Term of Agreement

The maximum term of a repayment agreement is thirty-six (36) months. A waiver of up to two additional years may be granted only by the Leased Housing Director or their designee for verifiable mitigating circumstances.

8.8.2.2 Minimum Monthly Payment

The monthly payment is structured at the discretion of the RAA so that it is achievable by the family within a 36 month period. A participant family may make an initial lump sum payment to reduce the monthly repayment amount.

8.8.2.3 Missed Payments

When a family falls behind a total of three payments at any time during the term of the repayment agreement, it is in default of the repayment agreement and will be immediately terminated from the program. If a family fails to make a monthly payment, but later makes a double payment, the missed payment will not be counted as one of the three that leads to termination. If a family that is being terminated for missing three payments pays the entire debt in full on or before the date of the termination hearing it may be reinstated to the program.

8.8.3 Effect of Debt on Mobility/Portability

A participant family will not be permitted to move to a new unit if they are in arrears. The family must come current on the existing agreement before the RAA will issue a voucher to the family. If the family has a pre-March 1, 2004 agreement and a history of non-compliance with repayment agreements, the RAA may either require the family to repay the full amount or to come current on the agreement and enter into a new agreement in accordance with this section prior to moving.

A participant family will not be permitted to move out of state until the debt is paid in full.

8.8.4 Impact of Bankruptcy on Tenant Debt

If a participant files for bankruptcy, any debts owed to the housing agency are dischargeable. If a participant receives a judgment of bankruptcy, any debts are discharged.

8.8.5 Procedure:

1. If the RAA is owed money by a participant family, the RAA must send out a letter notifying the participant family of the debt. Notice to the family must be sent by certified mail return receipt requested and by regular mail. In instances where the certified mail is not accepted by the family and returned to the RAA, but the regular mail is not returned to the RAA by the Post Office, allegations by the tenant that they did not receive the notice will not be considered by the RAA as a reason for failure to respond to the notice. Unless both are returned to the RAA, there will be the presumption that the notice has been received.

If entitled to, the participant family may enter into a repayment agreement. If the participant family agrees to enter into a repayment agreement, the RAA must complete the Repayment Agreement and have the participant family sign it. The repayment agreement should reflect a monthly repayment that will realize payment in full within 36 months unless a waiver has been authorized. The repayment agreement must reflect any initial lump sum payments made to reduce the debt.

2. A copy of the repayment agreement must be given to the participant family and staff, as appropriate, with the original placed in the participant's file.
3. The RAA shall ensure that appropriate staff and the FSS Coordinator(s) receive a monthly report listing all families who are current participants and who have outstanding claims. This report must be made available to all RAA staff, as required, so that the policies set forth herein may be fulfilled.
4. When a participant family requests a new Voucher in order to move, the RAA must first review the file and the updated, outstanding claim report to see if a repayment agreement is present and current. If the participant family is in default on the repayment agreement then the participant family shall be terminated from the program. See also section 8.8.3, Effect of Debt on Portability.
5. In those cases where the Head of Household requests the transfer of the subsidy to a remaining household member, the subsidy will not be permitted to be transferred until the debt is paid in full.

8.8.6 Billing:

The RAA is responsible for sending a monthly bill to each family that owes money to the RAA. The monthly bill may be sent by regular mail. For each missed payment, the RAA will send a letter notifying the family that payment is overdue. In addition to the updated information as to the status of the outstanding account, the bill or letter shall advise the family of the consequences of the family's failure to abide by the repayment agreement. It is advisable that letters regarding missed payments be sent by both regular and certified mail.

8.8.7 Monitoring and Reporting

The RAA is responsible for the monitoring and reporting of all tenant owed debt as required by DHCD in its quarterly report or otherwise.

The RAA shall maintain a list of past participants for whom claims were paid but whose present whereabouts are unknown. This list must be updated quarterly and provided to Section 8 Leased Housing Directors and Intake Coordinators at each RAA.

8.8.6.1 Monitoring and Reporting for FSS Participants

Prior to the preparation of the annual FSS Account report to the FSS family as required by 24 CFR 984.305 (a) (3), the FSS Coordinator shall insure that any interest deduction and segregation of funds allowed by 24 CFR 984.305 (a) (3) (iii) is made.

Prior to the disbursement of the FSS Account to the FSS family as required by 24 CFR 984.305 (c), the FSS Coordinator shall insure that the tenant family is in good standing and in compliance with the existing lease. If the family owes any money to the RAA or the property

owner then the FSS Coordinator will advise the family that they are not able to receive the FSS money until and unless the money owed to the RAA or to the property owner is paid in full.

If the potential FSS graduate's escrow account balance is equal to or greater than the amount owed to the RAA, and the family is otherwise eligible to graduate from FSS and receive their escrow balance, the RAA may disburse the escrow balance in two checks. The first would be for the amount owed to the RAA. When the tenant/graduate signs the check back over to the RAA, the debt is cleared and the RAA may disburse the remaining funds to the graduate. This process presumes an in-person meeting, with appropriate sign-offs and documentation relating to the elimination of the tenant-owed debt.